

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No.: 3:08-cv-143**

PORTALES PLACE PROPERTY, LLC,

Plaintiff,

v.

MARIO GUESS a/k/a JERRY DEMARIO
GUESS a/k/a J.D. GUESS a/k/a JERRY D.
GUESS, LIGNA ACQUISITION GROUP,
LLC and THP ESCROW SERVICES CORP.,

Defendants.

**MOTION TO WITHDRAW AS COUNSEL
AND TO TEMPORARILY STAY
PROCEEDINGS**

NOW COMES, Counsel for the Defendants, Mario Guess a/k/a Jerry Demario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess and Ligna Acquisition Group, LLC, and for its Motion to Withdraw as Counsel and to Temporarily Stay Proceedings states:

1. Defendants hired Counsel who appeared for the first time on or about April 14, 2008 in order to assist the Defendants with timely compliance with the Court's orders.
2. Since this time, there has been a break down of the attorney-client relationship to the extent that the Firm can no longer represent the Defendants in this matter, based upon the following:
 - a. Inability of the Attorney and Client to communicate effectively and to agree on strategy; and,
 - b. Failure of Defendants to pay, or to respond to the requests for payment by, the Firm.
3. This matter was recently initiated, and there is adequate opportunity for Defendants to secure new counsel, and in fact, this Firm and co-counsel has made every effort to recommend new counsel.
4. Notice of this Motion, Hearing Notice, and all associated documents have been sent to Plaintiff and Plaintiff's corporate counsel, and all other counsel of record.

5. Plaintiff still has sufficient time to obtain other counsel for trial or settlement purposes.
6. The undersigned counsel continued to represent the Defendants in order to comply with the several Orders of this Court, requiring very expeditious response and action.¹
7. Defense counsel discussed this motion with Plaintiff's counsel on April 24, 2008, and Plaintiff's counsel represented that Plaintiff would not object to Defense counsels' withdrawal from representation but would object to any stay of the proceedings.

WHEREFORE, Robinson Elliott & Smith and its attorney representing the Defendants, Mario Guess a/k/a Jerry Demario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess and Ligna Acquisition Group, LLC , respectfully request that this Court enter an order granting the following relief:

1. Remove William C. Robinson and the Law Firm of Robinson Elliott & Smith, as attorneys for Defendants, Mario Guess a/k/a Jerry Demario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess and Ligna Acquisition Group, LLC in this matter; and,
2. Allow Defendants, Mario Guess a/k/a Jerry Demario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess and Ligna Acquisition Group, LLC, sufficient time to obtain new counsel and comply with the requirements of the Court's Scheduling Order; and,
3. Grant such further relief as this Court deems proper.

This 24th day of April, 2008.

Respectfully submitted:
ROBINSON ELLIOTT & SMITH

s/ William C. Robinson
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Attorney for Defendants MARIO GUESS
a/k/a JERRY DEMARIO GUESS a/k/a J.D.

¹ Scott G. Hornby, co-defense counsel for the Defendants referenced herein, explained the situation to Plaintiff's counsel on April 22, 2008 and sought his consent to extend the deadlines and to modify the court's order to assist Defense counsel and the Defendants referenced herein to secure new counsel. However, Plaintiff's counsel flatly refused indicating that his client's directive was to "keep the accelerator down on Mr. Guess [Defendants referenced herein]."

GUESS a/k/a JERRY D. GUESS, LIGNA
ACQUISITION GROUP, LLC__

PROOF OF SERVICE

STATE OF NORTH CAROLINA)
COUNTY OF MECKLENBURG)

_____, being first duly sworn, deposes and says that:

I am employed by the law firm of Robinson Elliott & Smith, attorneys for Defendants Mario Guess a/k/a Jerry Demario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess and Ligna Acquisition Group, LLC.

On April __, 2008, I caused a copy of the attached Motion to Withdraw as Counsel and to Temporarily Stay Proceedings, Brief in Support of Motion to Withdraw as Counsel to Temporarily Stay Proceedings, and this Proof of Service, to be served upon the following counsel for the Plaintiff through the Notice of Electronic Filing:

Kenneth B. Oettinger, Jr.
Womble, Carlyle, Sandridge & Rice
One Wachovia Center
301 S. College St., Suite 3500
Charlotte, NC 28202

Email: koettinger@wcsr.com

Attorney for Plaintiff

Subscribed to and sworn to before me this
The ____th day of April.

Notary Public